

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In Re: CenturyLink Residential )  
Consumer Billing Disputes ) File No. 17-MD-2795  
Litigation ) (MJD/KMM)  
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 )  
 ) Minneapolis, Minnesota  
 ) May 2, 2018  
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BEFORE THE HONORABLE MICHAEL J. DAVIS  
UNITED STATES DISTRICT COURT JUDGE  
**(MOTION HEARING)**

Court Reporter: STACI A. HEICHERT  
RDR, CRR, CRC  
1005 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

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**P R O C E E D I N G S**

**I N O P E N C O U R T**

The COURTROOM DEPUTY: This is MDL in re CenturyLink Sales Practices and Securities Litigation. MDL Case No. 17-MD-2795.

Counsel in the courtroom, will you please state your appearances for the record.

MR. GUDMUNDSON: Good morning, Your Honor. Brian Gudmundson, Zimmerman Reed, on behalf of plaintiffs.

THE COURT: Good morning.

MS. OGUNMUYIWA: Joanna Ogunmuyiwa, Geragos & Geragos, on behalf of the plaintiffs.

THE COURT: Good morning.

MS. FELDMAN: Good morning. Lori Feldman, Geragos & Geragos, on behalf of consumer plaintiffs.

THE COURT: Good morning.

MR. HEDLUND: Good morning, Your Honor. Dan Hedlund, Gustafson Gluek, on behalf of plaintiffs.

THE COURT: Good morning.

MS. REGAN: Good morning, Your Honor. Anne Reagan from Helmuth & Johnson on behalf of plaintiffs.

THE COURT: Good morning.

MR. RIDDLE: Good morning, Your Honor. Bryce Riddle of Zimmerman Reed here on behalf of consumer plaintiffs.

1 THE COURT: Good morning.

2 MR. LOBEL: Good morning, Your Honor. Douglas  
3 Lobel on behalf of CenturyLink and the proposed interveners.

4 THE COURT: Good morning.

5 MR. MCNAB: Good morning, Judge Davis. Bill  
6 McNab, Winthrop & Weinstine, also on behalf the defendants.

7 THE COURT: Good morning.

8 MR. VOGEL: Good morning, Your Honor. David Vogel  
9 from Cooley on behalf of the defendant intervenors.

10 THE COURT: Good morning.

11 MS. FAIRLESS: Good morning, Your Honor. Caroline  
12 Fairless of Wheeler Trigg O'Donnell on behalf of the  
13 defendants and intervenors.

14 THE COURT: Good morning.

15 MS. WRIGHT: Good morning, Your Honor. Elizabeth  
16 Wright from Cooley LLP on behalf of the defendant  
17 intervenors.

18 THE COURT: Good morning. Do we have anyone on  
19 the phone?

20 THE COURTROOM DEPUTY: We do have some attorneys  
21 on the phone, if you would please state your appearances for  
22 the record.

23 MR. SANCHEZ: Good morning, Your Honor. This is  
24 Alfred Sanchez in Albuquerque, New Mexico, for the consumer  
25 plaintiffs.

1 THE COURT: Good morning. Anyone else?

2 MS. FLOOD: Good morning, Your Honor. Alyssa  
3 Flood on behalf of the consumer plaintiffs.

4 THE COURT: Good morning.

5 MS. FRENKEL: Good morning, Your Honor.

6 MR. O'MARA: Good morning --

7 MS. FRENKEL: Caitlin Frenkel on behalf of the  
8 consumer plaintiffs.

9 THE COURT: Good morning.

10 MR. O'MARA: Good morning, Your Honor. Mark  
11 O'Mara, also from O'Mara Law Group, on behalf of the  
12 consumer plaintiffs. Good morning.

13 THE COURT: Good morning.

14 MR. BLATCHLEY: Good morning, Your Honor. Michael  
15 Blatchley from Bernstein Litowitz on behalf of the state of  
16 Oregon, the lead plaintiff in the securities case.

17 THE COURT: Good morning.

18 MR. GIBBS: Good morning, Your Honor. Patrick  
19 Gibbs from Cooley on behalf of the defendants in the  
20 securities case.

21 THE COURT: Good morning.

22 MR. DUBANEVICH: Good morning, Your Honor. Keith  
23 Dubanevich for the state of Oregon, the lead plaintiff in  
24 the securities case.

25 THE COURT: Good morning.

1 MR. FISHBEIN: Good morning, Your Honor, Gregg  
2 Fishbein, Lockridge Grindal Nauen, also on behalf of the  
3 state of Oregon.

4 THE COURT: Good morning. All right. Let's  
5 proceed with the arguments.

6 MR. LOBEL: Your Honor, good morning again. I do  
7 believe we are making progress. We didn't bring any snow  
8 with us this time, so that's a positive.

9 THE COURT: That's for sure. It's good weather  
10 now.

11 MR. LOBEL: Your Honor, I think it makes sense to  
12 start with the Court's standard of review on this motion,  
13 and to state the obvious, we're not here to argue the  
14 arbitration motion today. We don't intend to do that. We  
15 don't have to decide if we win that motion. We're not here  
16 on likelihood of success or anything of that nature. The  
17 standard I believe that governs this motion today is simply  
18 whether there's a basis to temporarily stay discovery while  
19 we resolve that motion that we filed over the weekend, and I  
20 think that we quoted in our brief, and I think the  
21 plaintiffs agree with us, that if our motion has substantial  
22 grounds and if -- if the arbitration motion is not  
23 unfounded, then, under the standard, that Your Honor could  
24 exercise the discretion and decide to temporarily stay  
25 discovery.

1           So in our motion, we made a showing initially  
2       before we filed Saturday's filing which was our motion to  
3       compel arbitration and all declarations and supporting  
4       exhibits, the plaintiffs criticized our showing in the  
5       initial motion. They said it was weak. They said we didn't  
6       supply evidence. They said that there was no evidence of  
7       actual assent by the consumers. In fact, they even said  
8       that some people realized they hadn't assented. And I think  
9       that the filing on Saturday cures any questions that the  
10      Court may have about the nature and the scope and the  
11      strength of the evidence that we have regarding these  
12      arbitration agreements and these class action waivers. We  
13      presented reams of evidence to the Court in the Saturday  
14      filing. We, in some ways, I was concerned that it would  
15      harm the ECF system somehow it was so much material. And,  
16      of course, the Court doesn't have to take our word.

17           THE COURT: I think it did shut down our system.

18           MR. LOBEL: I think the system shut down before we  
19      filed, Your Honor.

20           THE COURT: We were trying to usurp the motion.

21           MR. LOBEL: Maybe an upgrade in anticipation of  
22      our filing.

23           THE COURT: Right.

24           MR. LOBEL: In any event, Your Honor, you don't  
25      have to take our word. The plaintiffs don't have to take



1       our word. We filed, in summary, four declarations of  
2       company personnel that included 96 pages of fact  
3       declarations, 203 paragraphs of fact declarations, 95  
4       exhibits that covered 650 pages. And in that  
5       material -- and, of course, we don't win on size and number  
6       of pages and we don't make our showing on that, but we  
7       presented in those materials actual evidence for each of the  
8       38 plaintiffs, the governing contracts in their relationship  
9       with the operating companies, screenshots of specific  
10      screens that they would have had to view in order to process  
11      certain transactions, and click to accept terms and  
12      conditions of the arbitration class action waivers in those  
13      screenshots. We produced those. And we produced electronic  
14      records of the very moment that these consumers, 34 of the  
15      38, actually provided assent to these arbitration  
16      agreements, class action waivers.

17               Now, we have evidence relating to all 38, but we  
18      actually have click to accept records in the record now  
19      before the Court of almost all of the 38 plaintiffs. So,  
20      again, we're not arguing the motion today. We feel like  
21      we've made our showing. We feel like we met the standard  
22      that's appropriate that both sides have agreed is the proper  
23      standard.

24               So what are the ramifications of that? Well, Your  
25      Honor, with respect to this particular motion today, we

1 think there should be no class wide discovery. When 38 of  
2 38 plaintiffs affirmatively assented to waive class action  
3 treatment in this case, and when 37 of 38 plaintiffs  
4 affirmatively assented to arbitrate their claim, we think  
5 that counsels against going forward with class wide  
6 discovery.

7 Now, I want to make the point that these were not  
8 just single touches, Your Honor. It's not like oh, that we  
9 showed the plaintiffs one agreement and they clicked and now  
10 here we're in court. The records that we produced reflect  
11 that most of these consumers assented to these provisions  
12 multiple times. And you may ask, well, why would they have  
13 done that? Well, the company processes seek to put in front  
14 of the consumers and seek their assent of these provisions  
15 as many times as possible in as many separate touches as  
16 possible because it's part of -- the arbitration agreements  
17 and class action waivers are part, an important part of how  
18 the company manages its business.

19 And so what you've got in the record and what the  
20 company did, these are not sort of one-time events. These  
21 are multiple events and multiple touches, multiple consents  
22 and clicks to accept that we've presented. And that jumps  
23 out when you look at the records of the individual consumer.

24 So when I'd like to do, which I think would be  
25 helpful for the Court and the plaintiffs, is in our briefs

1 that we filed on Saturday, and I'm sure, given the scope and  
2 your schedule, Your Honor, you haven't had a chance to  
3 review it very much, if at all, we included a chart where we  
4 listed the names of the individual consumers and we  
5 identified the multiple touches across the different  
6 services that apply to each of those consumers. And with  
7 the Court's permission, I'd like to hand that up and just  
8 walk you through it and show you the nature of the evidence.

9 THE COURT: All right. Have you given it to  
10 opposing counsel?

11 MR. LOBEL: We will do that now, Your Honor. This  
12 is, by the way, this is page 3 of our moving brief, so it's  
13 in the possession of the plaintiffs.

14 So, Your Honor, for the record, you've been handed  
15 a demonstrative which is an enlargement of page 3 for our  
16 motion to compel arbitration and enforce class action  
17 waivers. And this demonstrative is a chart, and I'd like to  
18 just walk you through it and explain what the chart  
19 represents. So if you look at the far left column under  
20 plaintiff name, these are the 38 named plaintiffs in the  
21 consolidated class action complaint. If you look across the  
22 document from left to right, you'll see six different  
23 columns. And these are the six different ways in which  
24 these plaintiffs agreed to the arbitration and class action  
25 waiver provisions in the evidence that we provided to the

1 Court on Saturday.

2 You'll see there's a reference to click in four of  
3 the six. Clicked is a reference to the process of click  
4 wrap which is common these days in which electronic terms  
5 and conditions are presented, I'm sure Your Honor is well  
6 aware of this, presented to consumers and the consumer  
7 clicks a mouse or clicks the computer to indicate consent.  
8 And I recall that the plaintiffs in their brief in  
9 opposition said and actually in the hearing that we had the  
10 last time that this is not a click wrap case, that this is a  
11 case of door to door sales and telephone sales. Well, in  
12 fact, Your Honor, that's not true. The records reflect, as  
13 you can see if you scan down, many, many clicks of these  
14 terms and conditions that these consumers engaged in. And  
15 so the plaintiffs are just wrong in terms of the nature of  
16 the contact between the company and their clients. And all  
17 the checkmarks that you see on this demonstrative are based  
18 on records of the company that we presented in our motion on  
19 Saturday.

20 So just quickly working through it, clicked  
21 internet service is -- occurs when a consumer is utilizing a  
22 modem that's company provided and the consumer is logging on  
23 to their internet, getting their internet up and running.  
24 As part of that process, they are presented with terms and  
25 conditions, including the arbitration, class action waivers,

1 and they are asked if they agree in order to proceed with  
2 the installation process. And the checks indicate that all  
3 of these consumers clicked yes that they did consent to  
4 those provisions.

5 You may ask yourself, why are there multiple  
6 checks with, say, Mr. Allison or some of the other  
7 consumers? Occurs in situation where there's a reboot or  
8 there's a new modem installed or there's a change of address  
9 or some other circumstance. So some of these -- some of  
10 these plaintiffs multiple times clicked on the modem  
11 installation.

12 Moving to the right to payment features, these are  
13 common features that CenturyLink offers as convenience to  
14 plaintiffs. Auto pay is one where you have an automatic  
15 withdrawal from your bank account monthly. Click bill pay  
16 is where you choose to pay a bill over the internet  
17 electronically. And my account is simply an account  
18 registration service where you have your name recorded with  
19 CenturyLink and you can do certain features through my  
20 account. And in order to sign up for each of those three  
21 electronic payment features, the company, consistent with  
22 its practice, presents these arbitration class action  
23 waivers and asks the consumers if they will consent. If the  
24 consumers choose not to content, they cannot go forward with  
25 the process and sign up for these payment features. So in

1 each case where you see the checkmark, it indicates that  
2 these consumers signed up for these payment features,  
3 obtained the payment features, and then assented to the  
4 arbitration class action waiver provisions.

5 Moving further to the right, received mail  
6 confirmation. That is what the company refers to as a  
7 confirmation of service letter. It is a letter that's sent  
8 out after a customer places an order. It confirms the date  
9 of the order, the order number, the specific items that were  
10 ordered, and it also has some verbiage and that I could show  
11 you, would like to show you later, indicating that the  
12 customers referred to a hyperlink involving company terms  
13 and conditions, and the customer is notified that  
14 arbitration is one of those terms and conditions and given a  
15 30-day right to cancel if they do not assent to those terms  
16 and conditions. And these checkmarks indicate that each of  
17 these consumers received this confirmation of service  
18 letter.

19 Moving further to the right, clicked TV services  
20 is another click wrap operation in which Prism TV was  
21 ordered as well in connection with a package involving  
22 high-speed internet, so when the modem is activated for the  
23 high-speed internet and someone has CenturyLink's  
24 proprietary Prism TV service, they're presented with the  
25 Prism terms and conditions which contain the arbitration

1 agreement and the class action waiver, and that applied to  
2 four of the consumers.

3 Moving further to the right, another click wrap  
4 operation, when a consumer places an on-line order, for  
5 example, I don't order my internet over the telephone, I  
6 order it strictly online, no customer rep involved, the  
7 company has a process where it asks for the consumer -- it  
8 presents the terms and conditions, it presents the language,  
9 and asks the consumer to consent before the order is  
10 finalized, that applied to two of the consumers.

11 And finally, Your Honor, there has been some  
12 reference to a modified 2017 agreement that the company sent  
13 out to all existing customers. These four customers were  
14 sent the amended contract, they got notice of a new  
15 arbitration agreement, they were given a right to opt out of  
16 that agreement, none of them chose to opt out, and that  
17 particular agreement for these consumers is applicable to  
18 them.

19 So in sum, this summarizes all of the different  
20 evidence in the declarations we've attached to our motion to  
21 compel to all 38 consumers.

22 And what I'd like to do next, with Your Honor's  
23 permission, is we've just tabulated the numbers because it's  
24 hard to make much of all of these checkmarks, and so I've  
25 got a document that we've prepared, I'll share with

1 plaintiff, that's simply the addition and reflecting the  
2 number of consumers and the number of operations and in  
3 each -- for each one of them. Would that be okay with the  
4 Court?

5 THE COURT: That's fine with me.

6 MR. LOBEL: Thank you, Your Honor.

7 Your Honor, I've handed you a demonstrative that's  
8 entitled summary of evidence totals, plaintiffs' acceptance  
9 of arbitration class action waiver provisions. Again, this  
10 is all information that's contained within the motion to  
11 compel arbitration. This all reflects information that was  
12 provided to the plaintiffs, just so we're clear on that.

13 And I'm not going to take the time to walk through  
14 the whole document, Your Honor, but what this simply  
15 tabulates the checkmarks on the other demonstrative and  
16 shows that 34 of 38 plaintiffs clicked to accept at least  
17 one agreement and that 25 of the 38 plaintiffs clicked more  
18 than one time.

19 And if you scan down the document, it shows the  
20 one, two, three, four, that simply shows the number of  
21 plaintiffs that clicked for different services, and they  
22 don't add up to 38 because, as I mentioned, some clicked  
23 more than once or had multiple services so the numbers won't  
24 add up. They overlap actually.

25 Moving to the middle of the document, 35 of 38



1 plaintiffs received this mail confirmation of service that I  
2 mentioned earlier that identified their --

3 THE COURT: When you say mail, is that e-mail or  
4 snail mail?

5 MR. LOBEL: I believe it's snail mail, Your Honor.  
6 I will turn to the guru who can tell me for sure.

7 MS. WRIGHT: It can be both.

8 MR. LOBEL: Apparently it can be both, Your Honor.  
9 So Ms. Wright is the, as I say, the guru of all of this  
10 information. That -- and I have a sample of that document  
11 that I'd like to show the Court. It does expressly mention  
12 arbitration, gives the option to cancel, and no plaintiffs  
13 canceled. And finally, I mentioned the amended internet  
14 agreement, there were four plaintiffs, and none of them  
15 opted out.

16 So the Court has, in its possession, as do the  
17 plaintiffs, affirmative evidence of all 38 plaintiffs  
18 agreeing to these various provisions in multiple ways. And  
19 if it's important to the Court's resolution of our motion, I  
20 think it would be helpful, I would like to just walk you  
21 through a few examples of these actual agreements so you can  
22 see what these documents look like.

23 THE COURT: Please.

24 MR. LOBEL: Thank you, Your Honor.

25 Your Honor, I've handed you a demonstrative book,

1 and just to be clear for the record, all of the documents  
2 contained in this book have been produced to the plaintiffs  
3 and all of these documents are in the record. And what  
4 we've simply done is we've just selected randomly three  
5 plaintiffs, and I just thought it would be useful for the  
6 Court to see what these actual records look like.

7 So, Your Honor, if you would turn to -- well, the  
8 first consumer is Mr. Garten. Mr. Garten is a Nevada  
9 resident. He was one of the initial plaintiffs. He  
10 complains that his auto pay was promised to be -- the money  
11 was promised to be taken out of his bank account late in the  
12 month but in fact it was taken out early in the month and he  
13 suffered damages as a result of that. And the plaintiffs  
14 have represented that Mr. Garten and others did not assent  
15 to any form of the arbitration or class action waivers.

16 If you turn to Exhibit 1, Your Honor, which is  
17 Mr. Garten's first exhibit, tab 1.

18 THE COURT: I'm there.

19 MR. LOBEL: Your Honor, this is a document from  
20 CenturyLink's electronic records. This is the actual  
21 evidence of assent. In the old days, of course, we'd have a  
22 signature. We rarely have that anymore. So this is a  
23 computer generated record that tracks Mr. Garten's use on  
24 the internet. And I could walk you through and show where  
25 Mr. Garten assented to the arbitration and class action

1 waiver provisions.

2 Your Honor, if you look on the exhibit at the  
3 billing account item that's four from the left, do you see  
4 where it says billing account?

5 THE COURT: I see it.

6 MR. LOBEL: That is Mr. Garten's account number.  
7 I'm not going to read it into the record. This document is  
8 marked highly confidential because it does contain consumer  
9 information.

10 If you go three to the right from there, Your  
11 Honor, four to the right, it says agreement name. That  
12 indicates that Mr. Garten was subject to the CTL consumer  
13 high-speed internet subscriber agreement. And the document  
14 even records to the right of that the agreement version  
15 number, So it indicates that Mr. Garten was presented with  
16 agreement version 12.

17 And now if you move all the way to the left,  
18 second to the far left, Your Honor, I want to make sure,  
19 under the tab agreement, acceptance, DTTM.

20 THE COURT: Right.

21 MR. LOBEL: That -- that means agreement  
22 acceptance date and time. And what that shows is that in  
23 the records of CenturyLink, Mr. Garten accepted the terms  
24 and conditions of the consumer high-speed internet  
25 subscriber agreement on May 12th, 2016, at 6:30 p.m. and one

1 second. Now, if you move down one row --

2 THE COURT: Wait a minute.

3 MR. LOBEL: -- you'll see that Mr. --

4 THE COURT: Say that again.

5 MR. LOBEL: I'm sorry, Your Honor?

6 THE COURT: Say that again.

7 MR. LOBEL: That Mr. Garten accepted the terms and  
8 conditions of --

9 THE COURT: May 12th. Okay.

10 MR. LOBEL: Click to accept I should say.

11 THE COURT: Go ahead.

12 MR. LOBEL: That that is actually the time that he  
13 clicked within the computer system and that's what the  
14 computer is reflecting. And so that's actual evidence of  
15 affirmative assent to the terms and conditions, including  
16 the arbitration agreement.

17 If you move down one row, Your Honor, you see that  
18 Mr. Garten was also a customer of the CenturyLink Prism TV  
19 service. He also was presented with the Prism terms and  
20 conditions which also included a separate arbitration  
21 agreement and class action waiver. And if you go back to  
22 the left under agreement acceptance date and time, it shows  
23 that Mr. Garten, five seconds later, after he accepted the  
24 HSI subscriber agreement, he accepted the Prism TV services  
25 residential agreement terms and conditions. And that was

1 version 20, according to the records.

2 Now, the records for the other consumers look  
3 similar. They're slightly different and obviously different  
4 dates and times and different agreements and different  
5 versions, so this --

6 THE COURT: Speed reader, huh?

7 MR. LOBEL: I'm sorry, Your Honor?

8 THE COURT: He was a speed-reader.

9 MR. LOBEL: Well, either that or he didn't read  
10 the terms and conditions, and I suspect we're all guilty of  
11 that at various times in our lives, but that's what the  
12 records indicate.

13 THE COURT: Go ahead.

14 MR. LOBEL: Your Honor, if you would flip to the  
15 next tab, what the next tab shows, tab 2, is these are the  
16 actual -- this is the actual language that Mr. Garten  
17 consented to when he clicked his mouse or his computer and  
18 accepted the HSI subscriber agreement. So if you look to  
19 the left side, these are -- this is the arbitration  
20 agreement that was presented to him and to which he assented  
21 at 6:30. And if you look to the right, this is the language  
22 of the class action waiver provision that he assented to at  
23 6:30 and 5 seconds later. So based on this evidence,  
24 Mr. Garten agreed to arbitrate and he agreed to waive class  
25 action treatment in any dispute he had with the company

1 broadly. Are you ready to move on, Your Honor?

2 THE COURT: Please.

3 MR. LOBEL: So if you flip to the next tab, tab 3,  
4 in addition, I mentioned these payment features earlier when  
5 we were going through the chart. Mr. Garten enrolled in two  
6 payment features where he also agreed to arbitrate his  
7 claims. Tab 3 is my account which is akin to an on-line  
8 registration process, and what you're looking at is a  
9 screenshot of the website that all customers need to work  
10 through in order to sign up for my account. And you'll see  
11 there in the middle, Your Honor, that all customers are  
12 presented with links to these two different agreements, the  
13 website user agreement and the payment agreement. They can  
14 read -- they can click on those links, read that agreement,  
15 print it, save it, whatever they choose to do, they are  
16 agreeing that by registering to use the my account site,  
17 you're accepting and agreeing to both of those agreements.  
18 And significantly, they cannot get past this screen if they  
19 do not click I have read and accept the terms and conditions  
20 outlined above. And the records of the company show that he  
21 did click that because he, in fact, signed up for my  
22 account, so that's a third way that Mr. Garten agreed to  
23 arbitrate his claims.

24 Now, the next tab, tab 4, shows the payment  
25 agreement arbitration and class action provisions. These

1 are slightly different than the other provisions he agreed  
2 to. And you see the language on the left side for  
3 arbitration and on the right side for class action waiver.  
4 And so because Mr. Garten went forward with his my account  
5 process, he agreed to arbitrate his claims and he agreed to  
6 waive any class action treatment.

7 And finally, tab 5, in addition to my account,  
8 Mr. Garten also signed up for auto pay. As I mentioned, his  
9 claim relates to auto pay. And this is a screenshot which  
10 -- by the way, all of this information is in the  
11 declarations that we provided on Saturday with our motion.  
12 This is a screenshot of the on-line process to register for  
13 auto pay. And you're able to click on the link to pull up  
14 the terms and conditions, and that pulls up the payment  
15 agreement according to the declaration reference at the  
16 bottom. And the company records show Mr. Garten doing this  
17 to register for auto pay. So Mr. Garten then signed up  
18 twice for payment agreements in addition to his registration  
19 and installing his modem.

20 So, Your Honor, those are the records -- sorry.  
21 Those are the records that we have that we presented to the  
22 Court and the plaintiffs with regard to one consumer. We've  
23 got similar records for 38 consumers in different and  
24 varying ways. And I've got two more examples. I'd leave it  
25 up to the Court whether you want me to walk through those or

1 not. They are similar.

2 THE COURT: Please don't.

3 MR. LOBEL: Okay. I understand, Your Honor. But  
4 I thought it was important for you to just see what these  
5 documents looked like. And thank you for allowing me to do  
6 that.

7 So Your Honor, in light of this significant amount  
8 of information, and getting back to the motion that's before  
9 the court today because I promised you I wouldn't argue the  
10 motion to compel, we think it's prudent to hold off on class  
11 wide discovery on the basis of the showing that we made. We  
12 think that the Court should first determine which claims  
13 remain in court after we resolve the motion that will be  
14 resolved in a few months and then determine the proper scope  
15 of discovery. Use the motions as a way to sift through  
16 these claims and let -- and let's, maybe they'll all remain.  
17 Maybe none will remain. Maybe the only, Mr. Maguire's claim  
18 will remain, the one gentleman who didn't agree to  
19 arbitrate. But we think that once that happens, then the  
20 Court can fashion discovery that's proportionate to the  
21 remaining claim and appropriate.

22 And, Your Honor, the reason I say that is that the  
23 plaintiffs make much of Mr. Maguire. He's a small business  
24 owner, did not have an arbitration agreement because he's  
25 got a business, a separate business contract. He did have a



1 class waiver agreement. And they make much of, well, the  
2 case will go forward and Mr. Maguire will be before the  
3 Court so we might as well get going. Well, Your Honor, we  
4 disagree. If all of these claims are moved to arbitration  
5 and only Mr. Maguire is left and it's a one-off plaintiff  
6 case, nonclass, with damages of a thousand or \$2,000, I  
7 think the MDL will likely be dissolved. I think the case  
8 will go back to Florida. I think the Court will find that  
9 there's no federal jurisdiction over the claim. It will go  
10 to Florida state court where it belongs. And so I'm  
11 not -- we don't concede, we don't agree at all, contrary to  
12 what plaintiffs say, that any case would necessarily go  
13 forward. We won't know until Your Honor resolves the  
14 motions, and that's what we're suggesting that prudence  
15 dictates.

16 I will say, Your Honor, I know you want to move  
17 the case forward, as do we. We think we will be making much  
18 progress over the summer. We're going to be very busy on  
19 this case. Plaintiffs have asked for three months of  
20 discovery related to our motion. We've got this  
21 intervention discovery that's ongoing. We are going to  
22 resolve the issue of, at the end of that process, what cases  
23 belong in this court, whether the MDL will continue, and  
24 it's very significant progress, in our view. And so we  
25 think we can make lots of progress without exposing the

1 company to classified discovery that frankly we believe that  
2 the parties agreed we would not ever engage in. And so we  
3 don't want the Court to feel that the case will be stalled  
4 while this process unfolds.

5 And, Your Honor, I would say that the most  
6 important consideration ultimately, and I mentioned this in  
7 the last status, is the huge imbalance in prejudice to the  
8 two sides here. If you temporarily stay discovery, class  
9 wide discovery in this case, because individual discovery  
10 has already occurred, if you temporarily stay it, nothing  
11 changes for the plaintiffs other than that they are delayed  
12 a few months in getting this material that they want so  
13 badly. We believe they have contractually agreed that they  
14 should never get that material. But obviously Your Honor  
15 will decide that.

16 THE COURT: Well, the question is, if I do stay  
17 it, as you are trying to convince me to do.

18 MR. LOBEL: Yes.

19 THE COURT: Will they have -- will the plaintiffs  
20 have received the discovery to mount their challenge against  
21 your motion to dismiss?

22 MR. LOBEL: Well, Your Honor -- well, are  
23 you -- do you mean their motion to compel arbitration?

24 THE COURT: Yes.

25 MR. LOBEL: Yes. Yes, Your Honor. We believe

1       that they're entitled to that discovery under the law, that  
2       they're entitled to discovery on assent to these contracts,  
3       so yes, absolutely.

4               THE COURT: But won't there be -- there will be a  
5       dispute about what evidence will be needed?

6               MR. LOBEL: Well, there may be disputes, Your  
7       Honor, and I'm confident the parties can resolve those. But  
8       what we know for sure they shouldn't get is class wide  
9       discovery. These are -- the issues would be did the  
10      individual consumer, did Mr. Garten consent to, did he form  
11      an agreement to a contract. That they are entitled to.  
12      What they're not entitled to are 9.7 million documents that  
13      they want so badly that relate to an investigation. What  
14      they're not entitled to are companywide sweeping sales  
15      practice records. None of those have to do with whether a  
16      contract was entered into for these individual consumers.  
17      And we believe that they've waived the right to that  
18      information, so all we're asking is, Your Honor, just let's  
19      just wait and see how it shakes out I guess is the way it to  
20      put it. But what -- what I was saying is that --

21              THE COURT: Let me ask you one more left field  
22      question.

23              MR. LOBEL: Sure.

24              THE COURT: Dealing with the securities discovery,  
25      this case's discovery.

1 MR. LOBEL: Yes, Your Honor.

2 THE COURT: That would be quite broad.

3 MR. LOBEL: Your Honor, it will be broad, and I  
4 don't -- I don't presume to speak for Mr. Gibbs, but I  
5 believe with the automatic stay in place and the briefing on  
6 the motion to dismiss and the amended complaint, I believe  
7 Your Honor will resolve the motion to compel arbitration  
8 long before that discovery ever arises. So I don't see that  
9 presenting a problem because we've got, we're targeting  
10 roughly the end of the summer or maybe a little bit past  
11 that for I think resolution -- or at least the hearing on  
12 the motion to compel arbitration. So my understanding is  
13 that, and maybe Mr. Gibbs wants to speak to this, he's on  
14 the phone, the amended complaint has not even been filed yet  
15 and then there will be the motion to dismiss process which  
16 is lengthy, as I understand it.

17 THE COURT: Mr. Gibbs, are you there?

18 MR. GIBBS: I am, Your Honor. And that's correct.  
19 There is, under the Private Securities Litigation Reform  
20 Act, a discovery stay in place in the securities class  
21 action. Under your recent order, we need to meet and confer  
22 with plaintiffs' counsel in the securities case and submit a  
23 proposed schedule which I would expect to have a date for  
24 filing an amended consolidated complaint and then a briefing  
25 schedule for a motion to dismiss. Discovery would be stayed

1 throughout at least that part of the process leading up to a  
2 ruling on the motion to dismiss, and given how these  
3 schedules are I believe line up, I would expect that process  
4 to take us through the summer and into the fall. So I would  
5 be surprised if we were at a -- if we were in discovery in  
6 the securities case before you have the motions on  
7 arbitration resolved.

8 THE COURT: All right. Anyone else want to be  
9 heard on that issue?

10 MR. BLATCHLEY: Your Honor, this is Mike Blatchley  
11 from Bernstein Litowitz on behalf of the lead plaintiff  
12 Oregon. We are submitting and we will be working with  
13 defendants to set up a schedule, but I don't think we should  
14 presume that the timing will be as far as Mr. Gibbs  
15 suggests. But, again, we haven't worked out those details  
16 yet.

17 THE COURT: Okay. I appreciate that. Okay.  
18 Anything else on that issue?

19 All right. Go ahead.

20 MR. LOBEL: Your Honor, I was just talking about  
21 prejudice because that's one of the factors that courts look  
22 at in this decision in front of Your Honor, and I just do  
23 think there's a huge imbalance. We can't unring the bell if  
24 this class material comes out. And there are  
25 significant -- would be significant costs, not just monetary

1 costs, Your Honor, but the loss of these rights, if we are  
2 right, and this all presumes we're correct, are significant,  
3 the loss of the rights under the Federal Arbitration Act,  
4 the loss of our contractual rights, our significant  
5 prejudice, and on the other side, the only prejudice I see  
6 to the plaintiffs is delay. And if we're wrong, they will  
7 get what they want at the appropriate time. But, again, I  
8 think that the class discovery would effectively void the  
9 arbitration agreements and class action agreements. It  
10 would usurp the role of the arbitrator in determining the  
11 scope of discovery if we're correct. Obviously there would  
12 be enormous resources expended which may be wasted, in a  
13 sense, if there's never class treatment of these cases. And  
14 so logically the arbitrability issue should come first and  
15 be resolved before discovery, especially when we've made  
16 such a strong showing here in our motion.

17 And I think that one of the cases talks about the  
18 wisdom of staying discovery in this situation because, if  
19 not, the advantages of arbitration would be lost forever.  
20 And that's really what we think is a significant factor for  
21 the Court to consider. So with that, I've taken an awful  
22 lot of the Court's time, and I appreciate the time you've  
23 given me, and I'm happy to answer any questions, Your Honor.

24 THE COURT: Thank you for right now.

25 MR. LOBEL: Thank you.

1 MR. GUDMUNDSON: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. GUDMUNDSON: We've heard a lot of unsworn  
4 testimony this morning and a lot of testimony that's been  
5 evidence that's not been tested in discovery, and things are  
6 going to change quite a bit. It's all designed for one  
7 thing. It's all designed to create a Pavlovian response for  
8 us all, for the Court, for the plaintiffs' lawyers and for  
9 everybody else that when we ring that bell and say the word  
10 arbitration, everybody grinds to a halt and freezes until  
11 the defendant has what it wants.

12 Well, I can assure Your Honor that the plaintiffs'  
13 counsel in this room and the many law firms that have come  
14 together to prosecute this case are no dummies. We know  
15 that the *Concepcion* case has been around for a long time.  
16 We know what a arbitration agreement looks like and we know  
17 when it has the potential to destroy the rights of millions  
18 of people in one fell swoop. But here we smell a rat and  
19 for good reason.

20 One look no further than this fine postcard that  
21 was handed up to Your Honor that looks less like a rifle  
22 shot and more like a blood spatter analysis that we might  
23 need to get the CSI team in to look at. The saving grace,  
24 perhaps, may be their attempt last fall in 2017, in the far  
25 right column here, to fix all of their problems with the

1 arbitration agreement, and there are many, many problems  
2 with their arbitration agreements.

3 But let me take a step back and talk about the  
4 standard here, Your Honor. The standard is your complete  
5 discretion. This is no different than any other case in  
6 which the defendant stands up at the beginning when the  
7 complaint has been filed and says this thing is meritless,  
8 stay discovery. Judge Magnuson entertained a similar motion  
9 in the Target data breach case and denied it. It's the  
10 exact same standard.

11 Let's talk about these agreements. We're not here  
12 to argue the motion to compel arbitration today, although we  
13 did hear what I'm assuming is about 80 to 90 percent of  
14 their motion to compel arbitration argument. In a typical  
15 case what we'll get is something that looks like I suppose  
16 the process that they try to follow with the 2017 contract  
17 on the far right there, which we'll be attacking as a  
18 complete deception upon the class because it said nothing  
19 about pending litigation that they knew was pending.

20 But beyond that, we've got at least five, I think  
21 it's more like six or seven, different agreements and siloed  
22 within those are multiple versions over the years, various  
23 products, some of which weren't even at issue in this case  
24 and some of which aren't even being challenged by the  
25 plaintiffs, we've got various points in time, almost none,



1 at the point of sale. The point of sale when the contract  
2 is made and the bargain is struck is when the bargain is  
3 struck. We see virtually every checkmark here on this blood  
4 splatter analysis at some indiscriminate point in time when  
5 your grandmother or your neighbor or whoever is trying to  
6 deal with the situations that we allege in our complaint is  
7 trying to get their service up and running, trying to get  
8 the benefit of their bargain.

9 In some instances, they've said they send you a  
10 letter that says to -- they send you a letter that says to  
11 click on the internet to go look at the arbitration terms  
12 and conditions. This is prior to when the technician  
13 arrives to set up your internet. I guess they expect you to  
14 go to the library or somewhere else to get those terms, I'm  
15 not sure.

16 In other instances -- well, let me take a step  
17 back and talk about this unsworn testimony that concerns us  
18 so greatly, and that is the very term plaintiffs agreed, and  
19 that's what's caught our eye a lot here. They've given some  
20 internal documents that may not even be hearsay, they're  
21 probably double hearsay. They don't look like computer  
22 generated documents. They look like something that was  
23 created by a lawyer for presentation in this court. We'll  
24 be testing that. We don't know if they're authentic or not.  
25 But one thing is clear. They do not indicate who clicked

1       that button. In many instances, the CenturyLink technician  
2       may have done it. We believe about half of all of these  
3       contracts were part of a technician installation whereupon  
4       the technician could easily clicked through, as happened to  
5       one member of our legal team and other people who have been  
6       deposed in other aspects of the investigations that are  
7       impacting CenturyLink over these issues. We don't know who  
8       clicked that.

9               And it's just wrong for Mr. Lobel to say that we  
10       don't use signatures anymore. We see this all the time in  
11       cases where somebody has to sign and then we get a clean  
12       pamphlet of papers that come through and it's that person's  
13       signature on the dotted line as to the arbitration agreement  
14       at the point in time the contract is signed. That's not  
15       here.

16              But perhaps most concerning, perhaps most  
17       concerning, and we have not done our full analysis, but we  
18       just received -- I'm sorry, of what we just received on  
19       Saturday which was not part of this motion but which has  
20       been argued at length at today, perhaps most concerning,  
21       and, again, with no prejudice to the arguments we may make  
22       down the line after we have a full chance to analyze all of  
23       this, is the fact that they won't even say who the contract  
24       is with.

25              I'm looking at the CenturyLink high-speed internet

1 subscriber agreement, which was Exhibit 3 to their document,  
2 it would be ECF 90-3. This is a document they claim binds  
3 all sorts of people. It defines CenturyLink as the  
4 affiliate of CenturyLink, Inc. that provides you the  
5 service, software, and/or equipment. Well, who is that?  
6 We've got ten or so interveners coming in, our clients have  
7 never heard of these people. I'm a CenturyLink customer  
8 because I have been for years and you just keep it going, of  
9 course, I -- I have never heard of any of these people.  
10 Where's the contract? Where does it say who the agreement  
11 is with? We are going to be attacking these contracts. And  
12 when you attack the formation of the contract and the  
13 existence of the contract, different things happen in  
14 arbitration that requires us a stop and grind an MDL to a  
15 halt.

16 When they stand before Your Honor this fall or  
17 whenever the Court sets the hearing, the standard of proof  
18 to compel arbitration is going to be that all of the  
19 plaintiffs assented to arbitrate these claims. They've made  
20 no showing of any valid contract, no proof of ascension, and  
21 no -- have not argued that those arbitration agreements  
22 apply to these claims.

23 And going back to who the party, the defendant  
24 here is CenturyLink, Inc. CenturyLink, Inc., has said in  
25 its papers repeatedly and in court to Your Honor it has done

1 nothing to anyone, has no agreements with anyone, it has not  
2 said a word to anyone, it doesn't even have any employees,  
3 it has never done anything wrong. And when they said that  
4 you've got the wrong defendant there, we said, okay, well,  
5 who said all of this stuff? Our clients called CenturyLink  
6 and talked to somebody, who said this stuff? They didn't  
7 provide that information. Instead, we've got interveners.  
8 They are not saying these are proper defendants. They're  
9 merely saying they're parties to some contracts that our  
10 clients may or may not be aware of. But who said all of  
11 this stuff? Who made these promises to our clients about a  
12 price that was never honored and never intended to be  
13 honored? All we've heard is that we've got arbitration  
14 clauses so broad that they encover -- they encompass all  
15 entities, all people, all claims for all-time. Well, we  
16 think that's a shell game and that it falls well short of  
17 the ascent that's required to destroy the legal rights of  
18 all of these people and all of these millions of class  
19 members.

20 Let's talk about prejudice for a second. The  
21 prejudice here, they say, is having to undergo class wide  
22 discovery. That's really the sum and substance of the  
23 prejudice they describe. But even the individual claimants  
24 in this case have fraud claims, and those fraud claims go  
25 all the way to the very top of the business model and

1 everything to prove that what happened actually happened.  
2 They're going to be producing that stuff and likely already  
3 have. These documents have been collected for attorney  
4 general investigations, for all sorts of things already,  
5 this stuff, for an internal investigation apparently that is  
6 going to be subject to some motion practice before Your  
7 Honor.

8 But even talking about prejudice, this is going to  
9 take some time. This is MDL discovery in very, very  
10 important large claims that are going to take a long time to  
11 negotiate. I've got lead counsel in other case in the  
12 Northern District of Georgia right now in front of Judge  
13 Totenberg and I've done other cases in front of Judge  
14 Thrash. In the Northern District of Georgia, there's an  
15 automatic stay of discovery by operation of the local rule.  
16 And in those cases that we've had in front of Judge Thrash,  
17 the Equifax case and the Home Depot data breach case and  
18 they're in front of Judge Totenberg in the Arby's data  
19 breach case, we say, we understand that there's a stay of  
20 discovery here, but we need to get things in place so that  
21 when that stay is lifted we can move things down the line  
22 and that we don't start the process at that point.

23 Frankly speaking, if we started the process of  
24 serving requests for production, negotiating ESI parameters,  
25 negotiating objections and responses and things like that

1 for this fall, whatever case is left, and I'm highly  
2 confident that there will be some case, that's not going to  
3 get started, the documents won't start flowing until early  
4 next year. But if we were able to get the process moving,  
5 it takes months, frankly, to get these things negotiated, to  
6 get the discovery disputes resolved and things like that.

7 We're already teeing up. We served intervention  
8 discovery. We've heard about the massive overreach and the  
9 massive objections that we're going to be receiving. That's  
10 going to be litigated and that's going to be before Your  
11 Honor on a motion that's set to be heard I think May 24th.  
12 So I think Your Honor hit the nail in the head when you said  
13 there's going to be some disputes over this kind of stuff  
14 and it's going to have to be resolved.

15 THE COURT: Hold on, I'm reading Judge Magnuson's  
16 order right now.

17 MR. GUDMUNDSON: Sure. We've heard some concerns  
18 in the papers, both in sort of some concerns about excessive  
19 costs, excessive discovery, prejudice and things like that,  
20 but I want to assure the Court of a couple of things.  
21 Number one, plaintiffs have no desire to take more discovery  
22 than is needed. We are -- we take these cases on contingent  
23 bases. We manage them the most efficient way as possible.  
24 We've got a lot of stuff to do here, a lot of paper to  
25 manage. We want to be as efficient as possible, and we're

1 very experienced at doing that. We have highly skilled ESI  
2 experts and technicians and lawyers who will help craft the  
3 most efficient document collection production review  
4 possible. We want to work with them to address the burden.  
5 We do that in every case.

6 We've also got a very, very robust clawback  
7 agreement that we agreed to at the defendant's request. And  
8 this is what is known as a 502(d) agreement. In a 502(d)  
9 agreement, it sort of addresses the topic of inadvertent  
10 production, when the court -- when the parties might want to  
11 make some efficiencies to get documents rolling that might  
12 result in some inadvertence.

13 And as part of that 502(d) agreement, there's what  
14 is called a 502(b) inquiry which is if somebody wants to  
15 say, well, that wasn't inadvertently produced, I get to keep  
16 it, you look at the factors in 502(b) to see whether it was  
17 inadvertent. We agreed to get rid of those. We've said all  
18 you have to do is say the word and we'll give it back.  
19 That's a very robust clawback agreement that should  
20 eliminate a lot of burden.

21 But one of the big inquiries here and whether you  
22 -- and when you consider whether to grant a motion to stay  
23 is whether it's a going to give a tactical advantage to  
24 someone, and that's exactly what this is all about. It's  
25 all about giving CenturyLink a tactical advantage, and it

1       could not have been clearer, despite the fact the business  
2       model is going to come into play in some form or fashion  
3       because the individual claims have fraud components and  
4       other things that embrace it, the securities cases involve  
5       all of these issues, these things -- but the motive is  
6       clear, slice and dice.

7               I talked about an extensional crisis we had last  
8       time I was in here because that's exactly what they're  
9       trying to create. This is an MDL and, for better or worse,  
10      we need to resolve the big issue, the reason we're all here.  
11      But following this -- this wrongful pathway that's been laid  
12      out in this motion to stay, the motion to intervene, the  
13      motion to compel arbitration, just about every other  
14      utterance we've heard, is to make this all about 38  
15      individual complaining consumers, not about the Minnesota AG  
16      case, not about the securities case, not about the other  
17      many AG investigations that they're undergoing right now,  
18      but all about 38 complaining consumers, what they call the  
19      billing disputes litigation.

20             Before I sit down, I want to make a note on Rule  
21      23 because I think it's important. Because when I -- when I  
22      refer to this card as a blood spatter analysis, of course  
23      I'm being a bit, you know, glib with the Court, I suppose,  
24      but it does raise some issues. It does raise some issues to  
25      say, well, if so many plaintiffs agree to so many different



1       agreements and so many things are at issue and so many  
2       products, well, doesn't that really give pause for concern  
3       in Rule 23? And my response to that is this. That's why  
4       we're asking for this discovery and that's why we're making  
5       this inquiry and that's why we're making these statements to  
6       you.

7               The biggest element on class certification in most  
8       cases is predominance, and we will never stand up and say  
9       that that there's not individual issues in this case. But  
10      we want to be able to get the information and to prove to  
11      the Court that the overarching story, the binding story  
12      predominates over that, and we think that we will, if we're  
13      given a chance. Thank you, Your Honor.

14             THE COURT: All right. Thank you. Counsel.

15             MR. LOBEL: Your Honor, thank you. Let me get  
16      back to where I started which is the standard. I heard  
17      vigorous defense of the formation of these contracts, and  
18      I'm sure they're going to fight us hard on this, but he's  
19      wrong that this is unsworn testimony, Your Honor. We put in  
20      four declaration of 96 pages that are sworn by company  
21      personnel that sponsored all these documents. This is not  
22      unsworn. This is our showing. And the standard, as I said,  
23      is not if we win, not likelihood of success, did we make a  
24      substantial showing and is it not unfounded. And on that  
25      basis, nothing Mr. Gudmundson can -- I think can rebut that

1 we've made a significant showing for Your Honor to exercise  
2 your discretion to just delay, not -- not deprive, just  
3 delay for a short time until you really see what the state  
4 of play is. If they can do everything that he claimed that  
5 they can do, then eventually I suppose they will be entitled  
6 to this broad class wide discovery. But right now we've  
7 made I think cast significant doubt on whether these  
8 plaintiffs would ever be entitled to get class wide  
9 discovery or even this Court has jurisdiction. So I, again,  
10 prudence would caution to just wait and see.

11 Now, Your Honor, again, it was a scatter shot, I  
12 heard, well, the technicians probably come to the house and  
13 install the HSI and the modem instead of the consumer.  
14 Well, we put in a declaration from Ms. Irini who says that,  
15 first of all, 50 percent or more of consumers self-install  
16 their modems. There's no technician to click for them. So  
17 that's a problem with their theory and that's in the record.

18 And secondly, that -- I'm sorry, Your Honor. I  
19 lost my train of thought on that. But it's pure  
20 speculation, I mean, that a technician came in your house  
21 and took your modem over and installed and you were  
22 invisible to the arbitration agreement. I don't think the  
23 Court can base a decision on that kind of argument.

24 With respect to who did the consumers do business  
25 with, Mr. Shesagiri in his declaration, pages 5 to 7, he

1       went through the records of the company. He has a list of  
2       plaintiff and company that the plaintiff got service from.  
3       The reason that the HSI agreement doesn't have the name of  
4       the company is it's used nationwide, Your Honor. There are  
5       80 subsidiaries because of regulatory reasons that provide  
6       service by this company. They -- they cannot have 80  
7       different contracts that have the company name so they have  
8       one high-speed internet contract that is used by multiple  
9       state companies that provide high-speed internet. So but in  
10      any event, we know that the plaintiffs signed up for a  
11      CenturyLink service, obtained CenturyLink services, and  
12      consented to the agreement. So, you know, this notion that  
13      they don't know who their company is, they got bills every  
14      month, they paid them, I mean, surely they knew they were  
15      getting CenturyLink service.

16               Your Honor, this notion of push of a button, we  
17      can just sort of push of a button. It's not true at all.  
18      Whatever has been done in other proceedings, obviously we  
19      don't know whether those other proceedings or investigations  
20      are broader than this case, address different issues.  
21      There's privileged information. We would need to do a  
22      relevance review, a privilege review, privilege logs. We  
23      would have fights over these issues with the Court. It  
24      would take the Court's time, it would take CenturyLink's  
25      time, it would take the plaintiffs' time. All of this will

1       unfold if the class wide discovery goes forward. And while  
2       that may be appropriate if they're entitled to it, and,  
3       inevitable, if they're not entitled to it because they  
4       agreed to arbitrate, we should never be there. So that,  
5       again, that's why prudence counsels against it.

6               And I have to say, Your Honor, that Mr. Gudmonson  
7       said, you know, we'll be judicial, we'll be streamlined.  
8       Well, Your Honor has authorized discovery in one area in  
9       this case so far, limited discovery in the intervention  
10      motion. Last week we got 340 document requests to be  
11      finalized in 11 days. That's an issue that Mr. McNab wants  
12      to talk to you about. That's a problem that's arisen. But  
13      I say that only to say that the first shot out of the box  
14      was not limited as we had hoped and was not cabined in an  
15      appropriate way, in our view. So we ultimately see concerns  
16      about that issue and the rabbit hole that we would go down.

17             And, Your Honor, the other point that needs to be  
18      made is Mr. Gudmonson is ignoring the concept of  
19      proportionality. Proportionally is built into the law now.  
20      If it turns out that three of those cases or two or one  
21      remain, why should they get the same amount of discovery as  
22      if 38 remain or class wide? You know, that's why we have to  
23      put it through the sifter and see how it comes out and what  
24      remains and then the Court can fashion an appropriate,  
25      reasonable, proportionate discovery plan. Right now we

1 don't know. I think the Court may have a sense now that  
2 there's some evidence to support it. They'll attack it,  
3 you'll resolve it, and then we'll know. And so that's I  
4 think the bottom line is, you know, better safe than sorry,  
5 I suppose, is the way to look at it.

6 THE COURT: Okay. Thank you.

7 MR. LOBEL: Thank you, Your Honor.

8 THE COURT: Anything further?

9 MR. GUDMUNDSON: Maybe if Mr. McNab has something  
10 to say in motion to intervene discovery, I can address both  
11 points and that way we can make it move a little quicker.

12 THE COURT: Good morning.

13 MR. MCNAB: Good morning, Your Honor. Bill McNab,  
14 Winthrop & Weinstine, on behalf of defendants. I'll be very  
15 brief. I know the Court doesn't like surprises, and this is  
16 really just an update. It's not a ripe issue, but it's an  
17 issue that is quickly ripening.

18 As Your Honor will recall at the April 5th status  
19 conference, plaintiffs requested discovery regarding the  
20 intervention motion and Your Honor agreed. And you said,  
21 quote, let's do some very limited discovery, and then you  
22 rescheduled that motion to next month to June 7th for that  
23 purpose. And you said to plaintiffs' counsel, Is that  
24 enough time for you to get the discovery done, the limited  
25 discovery that you need? And Your Honor went on and said,

1 All right. You meet and confer. I want limited discovery.  
2 Let's get to the point. That was April 5th.

3 Last Friday, April 27th, more than three weeks  
4 later, at 4:30 in the afternoon, we received 340 document  
5 requests as well as notices for 11 depositions, all to be  
6 returnable within 11 to 13 days of those subpoenas. Your  
7 Honor, we are very concerned. We started the conversation  
8 with plaintiffs' counsel about those concerns yesterday. We  
9 have scheduled a meet and confer, a formal meet and confer,  
10 for tomorrow. We do feel that they waited over three weeks  
11 and then dumped massive requests on us and allowed us a week  
12 and a half to process those requests that information.

13 On top of that, Your Honor, not only are there so  
14 many requests, many of them do not address intervention at  
15 all. I'll give you just a few examples: documents  
16 sufficient to show adherence to corporate formalities;  
17 documents reflecting intercompany accounts, transfers,  
18 loans, and etc.; documents showing employee incentives and  
19 benefits; documents showing all employee training materials;  
20 documents showing ownership of all intellectual property,  
21 trademarks, and trade names; photographs of every building  
22 belonging to the proposed interveners.

23 Your Honor, we submit that none of that has  
24 anything to do with the simple question on intervention is  
25 does the moving intervener have an interest in the property

1 or the transaction at issue in the case.

2 But the real issue is how is any of that limited?  
3 We understood Your Honor's order. We were prepared and  
4 expected to engage in very limited intervention related to  
5 discovery and now, a month down the road, we are going to be  
6 forced to meet and confer to try to narrow this down. And  
7 as I said, we started that conversation yesterday. We will  
8 meet and confer in good faith. If we can get it resolved,  
9 you won't hear about it again. But given the scope of what  
10 we received and our perception that it's a long way from  
11 what Your Honor ordered as very limited intervention  
12 discovery, I have to say you may be hearing from the parties  
13 again on this, and I'm sorry to say so.

14 THE COURT: Okay. Thank you.

15 MR. GUDMUNDSON: Well, I'm here to argue another  
16 motion I guess I wasn't prepared to argue. They've got  
17 about ten companies who say that they are the right parties.  
18 340 divided by 10 is 34. I left a few messages and talked  
19 with Mr. McNab yesterday that said all the dates were  
20 negotiable, all the locations are negotiable, but the bottom  
21 line is this. CenturyLink Inc. says it ain't us, it ain't  
22 us, it's these people, it's these people over here, these  
23 are the people who did everything and we deserve to  
24 understand why that is. They've fashioned it in the form of  
25 a motion to intervene, stuck it right between a motion to

1 stay and two other massive motions, obviously to put us  
2 through our paces. We're fine with that. We are big people  
3 and we can deal with it. But there's a lot of discovery  
4 that goes into figuring out who the proper parties are when  
5 it's a shell game.

6 And all of the discovery, you will see when it's  
7 before you, as it was previewed by Mr. McNab, seeks to  
8 understand are these real companies? We've never heard of  
9 them. Nobody picked up the phone and said this is Larson  
10 Redfield, LLC when our clients called from Wisconsin.  
11 Apparently the Wisconsin clients contracted and dealt with a  
12 Larson Redfield, LLC. Never heard of them. But that's what  
13 all of these are going to.

14 And it's all going to be -- I will renew a request  
15 I made to the Court last time that was rejected, and I'm  
16 mindful of that, and we requested that the motion to  
17 intervene run concurrently with the motion to compel  
18 arbitration opposition and that was because we thought that  
19 a lot of the discovery would overlap and some of it does.  
20 There's some common declarants that cover both. But this  
21 issue of who the people -- who our people contracted with  
22 and who these arbitration agreements and contracts  
23 supposedly are between is an important issue and we need to  
24 figure that out.

25 And if it's going to take more time on the motion



1 to intervene, the result of the conversations between  
2 Mr. McNab and our team are probably not going to be that we  
3 just give up and say, okay, fine, we don't really care if  
4 it's a real company or not or we don't really care that the  
5 fact that the bills all say CenturyLink even though you say  
6 it's Larson Redfield, LLC. It's going to be that we come  
7 and ask for more time or we continue to pursue our rights  
8 and get whatever we can and subject to Your Honor's  
9 discretion. That's really all I have to say on that, Your  
10 Honor. Thank you.

11 THE COURT: Mr. McNab.

12 MR. MCNAB: Just very briefly, Your Honor. All  
13 the things that Mr. Gudmundson is talking about they want to  
14 know about who these companies are, are they real,  
15 that -- those have nothing to do with the standard on the  
16 motion to intervene. The -- it's a very low threshold and  
17 the intervener simply needs to make the showing that it has  
18 an interest in the property or the transaction at issue in  
19 the lawsuit.

20 Now, we have -- that motion isn't fully briefed so  
21 I'm not going to try and win that motion. What I'm  
22 suggesting is that we have already made the showing, we have  
23 submitted evidence, admissible evidence, as to who they are,  
24 what their relationships were with each of the individual  
25 plaintiffs, what their rights and interests are, so beyond

1 that, the other issues that Mr. Gudmundson and his  
2 colleagues are worried about are the subject of other  
3 discovery down the road if and when there comes a time for  
4 that discovery. If those parties are in, they're in. Thank  
5 you, Your Honor.

6 THE COURT: Thank you. Since there wasn't a  
7 motion before me, it was nice to be involved in all your  
8 disputes right now.

9 I will take the original motion under advisement  
10 and get my order out as quickly as possible.

11 Dealing with the motion to intervene and the  
12 discovery requests, you're all going to meet and confer and  
13 if you -- if there are difficulties on the timetable, I  
14 suggest that you both agree that we move the June motion to  
15 the date that we set up for the motion for arbitration, so  
16 that gives everyone enough time so we're not -- I've heard  
17 the complaint that everything is going to be squeezed in, in  
18 11 days. Well, it's summertime and 11 is easy.

19 So let's see if we can do something about that.  
20 You have my suggestion. I hope you take it up and then I'll  
21 have a joint motion and I will agree to that and then we'll  
22 have one or two days for you to argue. Okay, all right?

23 It's always good to see you all. It's -- you get  
24 this old senior judge down here to hear you because  
25 it's -- you just are outstanding attorneys and I just love

1 being in your presence. So let's adjourn, and I'll see you  
2 next time.

3 (Proceedings concluded at 11:44 a.m.)

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5 \* \* \*

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7  
8 I, Staci A. Heichert, certify that the foregoing is  
9 a correct transcript from the record of proceedings in the  
10 above-entitled matter.

11  
12 Certified by: s/ Staci A. Heichert

13 Staci A. Heichert,  
14 RDR, CRR, CRC  
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